## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

		NOV 2 0 1979
	Defendant.	)
ROBERT	PAUL ALYEA,	FILED
vs.		) No. 79-CR-100-C
	Plaintiff,	) )
UNITED	STATES OF AMERICA,	)

ORDER

Jack C. Silver, Clerk U. S. DISTRICT COURT

Defendant was charged by a three-count indictment and after a non-jury trial was convicted as to all three counts on August 17, 1979. Now before the Court for its consideration is the defendant's Motion to Arrest Judgment as to Counts One and Two, which are brought pursuant to Title 18 U.S.C. §1709. The defendant alleges that those Counts fail to charge an offense because they do not contain allegations of one of the essential elements of the crime.

The Government contends that the defendant's Motion was not timely under Rule 34 of the Federal Rules of Criminal Procedure. Rule 34 provides in pertinent part as follows:

The court on motion of a defendant shall arrest judgment if the indictment . . . does not charge an offense . . . The motion in arrest of judgment shall be made within 7 days after verdict or finding of guilty, or after plea of guilty or nolo contendere, or within such further time as the court may fix during the 7-day period.

The time limits set down in Rule 34 have been held to be jurisdictional. See Rowlette v. United States, 392 F.2d 437 (10th Cir. 1968); Marion v. United States, 171 F.2d 185 (9th Cir. 1948). However, several courts have permitted a challenge to the sufficiency of the indictment which is first made on appeal. See United States v. Beard, 414 F.2d 1014 (3rd Cir. 1969); Robinson v. United States, 263 F.2d 911 (10th Cir. 1959); United States v. Manuszak, 234 F.2d

421 (3rd Cir. 1956). And in Wright, Federal Practice and Procedure, Vol. 2, §573, the following comment is found:

The time limitations of the rule are said to be jurisdictional, and it is held that a motion in arrest of judgment made after the time has run comes too late. Nevertheless the courts have found a surprising number of ways to avoid this result...

Other courts have allowed untimely motions by virtue of the provision of Rule 12b) (2) that "lack of jurisdiction or the failure of the indictment or information to charge an offense shall be noticed by the court at any time during the pendency of the proceeding."

Rule 12(b) of the Federal Rules of Criminal Procedure provides:

- (b) Pretrial motions. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to trial:
- (2) Defenses and objections based on defects in the indictment or information (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceedings);

In Wright, Federal Practice and Procedure, Vol. 1, §193, it is said

[t]here is an inconsistency in this respect between Rule 34, on arrest of judgment, and Rule 12(b)(2). The same objections here discussed, lack of jurisdiction and failure of the indictment or information to charge an offense, are the stated grounds on which Rule 34 permits a motion for arrest of judgment. Yet the rule permits such a motion to be made only within seven days after verdict, or such extended time as the court may fix within the seven day period, while Rule 12(b)(2) makes it mandatory that the court notice precisely the same defect at any time during the pendency of the proceeding. The Supreme Court has observed this inconsistency but did not have to resolve it. The lower courts have considered that Rule 12, rather than the restricted time limit of Rule 34, is controlling.

In <u>United States</u> v. <u>Kehoe</u>, 516 F.2d 78, 89 (5th Cir. 1975), Judge Bell, in his dissenting opinion said:

....[T]he law in this circuit is that an indictment may be challenged for the first time on appeal, and after trial and conviction.

Walker v. United States, 5 Cir., 1965, 342 F.2d 22, 26. It is also the law in other circuits. United States v. Beard, 3 Cir., 1969, 414 F.2d 1014, 1017; United States v. Bailey, 7 Cir., 1960, 277 F.2d 560, 562.

It is true that the delay was an admitted trial tactic but experienced counsel were taking advantage of what is expressly permitted by Rule 12(b)(2). They wished to see the government's case before they moved to strike the indictment. The trial court could have ruled, but did not, that the motion came too late....

In <u>United States</u> v. <u>Trevino</u>, 491 F.2d 74, 75 (5th Cir. 1974) the Court said:

The indictment was challenged prior to trial as required by Rule 12(b)(2), F.R.Crim.P. Moreover, under the terms of the rule, an indictment may be challenged at any time if no offense is charged in the indictment. Walker v. United States, 5 Cir., 1965, 342 F.2d 22, 26; United States v. Beard, 3 Cir., 1969, 414 F.2d 1014, 1017.

In Marteney v. United States, 216 F.2d 760 (10th Cir. 1954), the defendants had been sentenced and committed on pleas of guilty. Thereafter the defendants moved to arrest the judgments on the grounds that the counts involved in the indictment failed to charge a federal offense. The trial court treated the pleadings as motions to vacate under \$2255, Title 28 U.S.C. The Tenth Circuit found that the Motions in Arrest of Judgment having been untimely filed under Rule 34, F.R.Crim.P., the trial court correctly treated them as \$2255 motions, stating: "Having in mind that it is the content of the pleadings and not the label which determines their nature and effect, we can see no impropriety in the court's treatment of the pleadings as motions to vacate under Section 2255." (Emphasis added).

The Court therefore finds that defendant's Motion for Arrest of Judgment, which was filed on September 14, 1979, has not been timely made. However, the Court further finds that said Motion pursuant to Rule 34 may properly be treated as a motion pursuant to Rule 12(b)(2).

Rule 7(c) of the Federal Rules of Criminal Procedure

requires that the indictment set forth a "plain, concise, and definite written statement of the essential facts constituting the offense charged."

The Supreme Court recently held:

....[a]n indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense." Hamling v. United States, 418 U.S. 87, 117, 94 S.Ct. 2887, 41 L.Ed.2d 590 (1974).

Title 18 U.S.C. §1709 states two separate offenses.

Hall v. United States, 168 U.S. 622, 18 S.Ct. 237, 42 L.Ed.

607 (1898); U.S. v. Trevino, supra. One part of the statute deals with embezzlement and the other with theft.

The first part of §1709 states:

Whoever, being a Postal Service officer or employee, embezzles any letter, postal card, package, bag, or mail, or any article or thing contained therein entrusted to him or which comes into his possession intended to be conveyed by mail, or carried or delivered by any carrier, messenger, agent, or other person employed in any department of the Postal Service, or forwarded through or delivered from any post office or station thereof established by authority of the Postmaster General or of the Postal Service;.... (Emphasis supplied)

The second part of §1709 states:

...[0]r steals, abstracts, or removes from any such letter, package, bag, or mail, any article or thing contained therein, ....

Counts One and Two of the Indictment here under consideration basically allege:

On or about [date], in the Northern District of Oklahoma, Robert Paul Alyea, being a Postal Service employee, did embezzle a first-class letter and its contents, eight one dollar bills, to wit: a letter addressed to [name and address], bearing a return address of [name and address], which letter had come into his custody while performing official duties as a letter carrier, U. S. Postal Service, in violation of Title 18, U.S.C. Section 1709. (Emphasis supplied)

The Indictment does not encompass the words "intended to be conveyed by mail".

In United States v. Pomponio, 517 F.2d 460 (4th Cir.

1975), cert. denied, 423 U.S. 1015, 96 S.Ct. 448, 46 L.Ed.2d 386 (1975), the court held insufficient an indictment which did not accurately and clearly allege all the elements comprising the offense charged in that case. In so doing, the Fourth Circuit relied upon a similar holding in United States v. Beard, supra. The Third Circuit decision was based on language contained in Russell v. United States, 369 U.S. 749, 82 S.Ct. 1038, 8 L.Ed.2d 240 (1962). In holding the indictment defective, the Supreme Court noted that the rules governing the contents of indictments, variances and amendments are designed to protect certain important rights: the Sixth Amendment right to fair notice of the criminal charge a defendant is required to meet, the Fifth Amendment right not to be placed twice in jeopardy for the same offense, and the right guaranteed by the Fifth Amendment not to be held to answer for certain crimes except upon a presentment or indictment returned by a grand jury.

The Court here confines itself to the legal sufficiency of the indictment and not the facts of the case as heretofore evolved in the non-jury trial.

Omissions which are fatal are those of essential elements of "substance", rather than "of form only." <u>United</u>

<u>States</u> v. <u>Camp</u>, 541 F.2d 737 (8th Cir. 1976); <u>United States</u>
v. <u>Carll</u>, 105 U.S. 611, 612 (1882).

In determining whether an essential element has been omitted a court will not insist that any particular word or phrase appear, and the element may be alleged "in any form" which substantially states the element. Hagner v. United States, 285 U.S. 427 (1932).

When an indictment does not accurately and clearly allege all the ingredients of which the offense is composed, it is insufficient. United States v. Pomponio, supra; United States v. London, 550 F.2d 206, 211 (5th Cir. 1977); United States v. Purvis, 580 F.2d 853 (5th Cir. 1978).

The Court finds that the indictment as to Counts One and Two does not charge an offense.

IT IS, THEREFORE, ORDERED that the defendant's Motion to Arrest Judgment be and the same is hereby converted to a Motion to Dismiss pursuant to Rule 12(b)(2), F.R.Crim.P. and that the same be and it is hereby sustained and Counts One and Two are hereby dismissed for failure to state an offense.

It is so Ordered this \_\_\_\_\_\_day of November, 1979.

H. DALE COOK

Chief Judge, U. S. District Court

United States o	1	es District Court f
DEFENDANT	JIMMY DEWAYNE BLACK	ISTRICT OF OKLAHOMA
	L   DOCKET NO. >	
	JUDGMENT AND PROBATION/COMMITME	NT ORDER A0 245 (5/75)
	In the presence of the attorney for the government the defendant appeared in person on this date	MONTH DAY YEAR 11 16 79
COUNSEL	WITHOUT COUNSEL  However the court advised defendant of right to couns have counsel appointed by the court and the defendant there    X   WITH COUNSEL   Charles W. Hack, Counsel	eupon waived assistance of counsel.  IT Appointed
PLEA	GUILTY, and the court being satisfied that there is a factual basis for the plea,	NOT GUILTY
	There being a finding/section of Suilty. Defendant is discharged Guilty.	NOV 1 6 1979  Jack C. Silver, Clark
FINDING & JUDGMENT (	Defendant has been convicted as charged of the offense(s) of having violate Sections 846, 841(a) (1), as charged in the India	ted Title 21, b. S. C., street.
_		
SENTENCE OR PROBATION ORDER	Three (3) Years  IT IS FURTHER ORDERED that the defendant is special parole term of Three (3) years, to comme of the sentence imposed herein.	sentenced to a
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SPECIAL CONDITIONS	and the latter of the state of	
OF PROBATION	en e	graduation and the
ADDITIONAL CONDITIONS OF PROBATION	In addition to the special conditions of probation imposed above, it is hereby ordered that the greverse side of this judgment be imposed. The Court may change the conditions of probation, rediany time during the probation period or within a maximum probation period of five years permprobation for a violation occurring during the probation period.	uce or extend the period of probation, and at itted by law, may issue a warrant and revoke
	The court orders commitment to the custody of the Attorney General and recommend	<del></del>
COMMITMENT RECOMMEN- DATION		and commitment to the U.S. Marshal or other qualified officer.
		CERTIFIED AS A TRUE COPY ON
51GNED BY	H. DALE COOK 11-16-79	By((

## UNITED STATES DISTRICT COURT

-	Northern	District o	of Oklahoma	
	ates of Amer vs. N BEEMAN, N SHANE	}	Criminal No.	79-CR-130-C NOV 15/97
		ORDER FOR DIS	MISSAL	$\frac{2^{3}}{H} \frac{\mathcal{P}_{i}}{\mathcal{P}_{i}} \frac{\mathcal{S}_{i}}{\mathcal{Q}_{i}} = 0$
Purs	uant to Rule	48(a) of the F	ederal Rules of Cr	iminal
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Attorney :	for the Nor	thern D	istrict of Oklaho	ma
hereby di	smisses the	Indictment	information, comple	against
Dorrisan	n Beeman al			int
Dorrisan	n Shane			
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Leave of court is granted for the filing of the foregoing dismissal.

United States District Judge

Date: 1 ansmle 15.1979

FORM OBD-113

8-27-74

DOJ

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United States of			
DEFENDANT	JORGE ALBERTO ORTEGA-ROJAS	DISTRICT OF	
	L  DOCKET NO.	►	3-C
,	JUDGMENT AND PROBATION/COMMITM	IENT ORDE	R AO-245 (5/75)
	In the presence of the attorney for the government the defendant appeared in person on this date	MONTH 11	DAY YEAR 15 79
COUNSEL	WITHOUT COUNSEL  However the court advised defendant of right to contain the defendant to the defendant of right to contain the defendant the d	thereupon waived assistand  Appointed	r defendant desired to e of counsel.
PLEA	GUILTY, and the court being satisfied that there is a factual basis for the plea,	ERE, X NOTÎ	N/IV 1 G 1978
	There being a finding/************************************		ack C. Silver, Cle 3. DISTRICT COI
FINDING &	Defendant has been convicted as charged of the offense(s) of having violated Section 1426(b), as charged in the Indictment.	ted Title 18	, 6.S.C.,
JUDGMENT (			11111111111111111111111111111111111111
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SENTENCE OR PROBATION ORDER	is placed on probation for a period of Four (4		
SPECIAL	In addition to the usual conditions of pro-	obation, the	defendant
CONDITIONS OF PROBATION	shall not again re-enter the United States 11:  As long as the defendant does not violate of probation will not be necessary.		· .
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ADDITIONAL CONDITIONS OF PROBATION	In addition to the special conditions of probation imposed above, it is hereby ordered that reverse side of this judgment be imposed. The Court may change the conditions of probation any time during the probation period or within a maximum probation period of five years probation for a violation occurring during the probation period.	n, reduce of <b>extend</b> the per	riod of probation, and a
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	X WITH COUNSEL	have counsel appointed by	the court and the defen	dant thereupon <b>Retain</b> (	waived assist	ance of counsel.	
=			(Name of	·		r được	
PLEA	there is a factual basis for t	he plea,	L NOLO CONTE	·		т <b>d</b> ul <b>yty</b> 1007 I II 19	[ ]
	There being a finding	NOT GUILTY.	TY. Defendant is disc	harged		C. Silver, . DISTRICT_C	
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nited States of	America vs. United States			
DEFENDANT	JOSE INES MONTOYA-HERNANDEZ  DOCKET NO.			
	JUDGMENT AND PROBATION/COMMITMEN	T ORDI	E <b>R</b> 40-2	245 (5/75)
	In the presence of the attorney for the government the defendant appeared in person on this date	MONTH	DAY 8	YEAR <b>79</b>
COUNSEL	WITHOUT COUNSEL  However the court advised defendant of right to counsel have counsel appointed by the court and the defendant thereup  X WITH COUNSEL  Bric Anderson, Court Ar  (Name of counsel)	and asked whet on waived assist	her defendant	desired t
PLEA	GUILTY, and the court being satisfied that there is a factual basis for the plea,	N( N	OUILTY 197	i D
	There being a finding transfer of \[ \bigcup_X \] OUILTY. Defendant is discharged \[ \bigcup_X \] GUILTY.		C. Silvar, C DISTRICT C	
FINDING &	Defendant has been convicted as charged of the offense(s) of having violated Section 1426(b), as charged in the Indictment.	Title 1	8, v.s.	c.,
JUDGMENT (	The Court finds that the defendant was 19 years of conviction and therefore subject to the Federa Act, but that he does not need to be confined for	1 Youth	Correct:	ions
	The court asked whether defendant had anything to say why judgment should not be pronounced. was shown, or appeared to the court, the court adjudged the defendant guilty as charged and court.	Because no suff	cient cause to 1	် the contra
SENTENCE OR PROBATION ORDER	The imposition of sentence is hereby suspended is placed on probation for a period of Two (2) Yes	ars from	this d	ate.
	en de la companya de			
SPECIAL CONDITIONS OF PROBATION	In addition to the usual conditions of probat; shall be returned to Mexico and he shall not aga: United States illegally.  As long as the defendant does not violate any of probation will be required.	ion, the	defenda er the superv	
	e e e			
ADDITIONAL CONDITIONS OF PROBATION	In addition to the special conditions of probation imposed above, it is hereby ordered that the ge reverse side of this judgment be imposed. The Court may change the conditions of probation, redu any time during the probation period or within a maximum probation period of five years permit probation for a violation occurring during the probation period.	ted by law, may	period of proba issue a warrant	ation, and
OMMITMENT. RECOMMEN-	The court orders commitment to the custody of the Attorney General and recommends	a certified and comm	ed that the Cler copy of this j itment to the l er qualified of	judgment U.S. Mar-
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IGNED BY				
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United States o	f America vs. United S	_tes ]	District Court fo
			RICT OF OKLAHOMA
DEFENDANT	ANGEL SANTIBANEZ-ZUNIGA		
	DOCKET N	NO. ➤ 📖	79-CR-127-C
	JUDGMENT AND PROBATION/COMMI	ITMENT	ORDER A0-245 (5/75)
	In the presence of the attorney for the government		
·	the defendant appeared in person on this date	<b>-</b>	11 8 79
COUNSEL	WITHOUT COUNSEL However the court advised defendant of right have counsel appointed by the court and the defer		
	X WITH COUNSEL L Bric Anderson. Cou	rt_Appoi	
	(Name o	f counsel)	e e e e e e e e e e e e e e e e e e e
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	<b>( └── J. NOT GUILTY</b> . Defendant is dis	charged	NOV 38 1979
	There being a finding fraction of Suitty. Defendant is discussed as a finding fraction of Suitty.	onui gou	Jack C. Silver, Clerk
	Defendant has been convicted as charged of the offense(s) of having w		U. S. DISTRICT COURT
FINDING &	Section 1426(b), as charged in the Indictm	ent.	
JUDGMENT		entropy of the second of the s	and the second of the second o
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	The court asked whether defendant had anything to say why judgment should not be was shown, or appeared to the court, the court adjudged the defendant guilty as cha	•	•
	hereby committed to the sustance of the abitation formal authorized moreontal	krieriner	zwienezzieksi
	The imposition of sentence is hereby sus is placed on probation for a period of Two		
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PROBATION ORDER			
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SPECIAL	In addition to the usual conditions of p	robation	the defendant is
CONDITIONS OF	to be returned to Mexico and he is not again States illegally.	n to re-	enter the United
PROBATION	As long as the defendant does not violat	e any la	wa, no supervision
	of probation will be required.		
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ADDITIONAL		e e e e e e e e e e e e e e e e e e e	
CONDITIONS	In addition to the special conditions of probation imposed above, it is hereby ordered reverse side of this judgment be imposed. The Court may change the conditions of pro	bation, reduce o	r extend the period of probation, and at
PROBATION	any time during the probation period or within a maximum probation period of five probation for a violation occurring during the probation period.	years permitted	
	The court orders commitment to the custody of the Attorney General and re	commends,	It is ordered that the Clerk deliver
COMMITMENT			a certified copy of this judgment and commitment to the U.S. Mar- shal or other qualified officer.
RECOMMEN- `` Dation			CERTIFIED AS A TRUE COPY ON
	<b>)</b>		THIS DATE
SIGNED BY			
U.S. Distri	H. DALE COOK		( ) CLERK
L U.S. Magis	pate <u>11-8-79</u>		( ) DEPUTY
and the second s	•		<b>100</b>

nited States of	America vs.	•	Jnited S	tes	Distri	ct Co	urt fo
DEFENDANT	> RHONDA MICHELLE 1	PRICE	∟ <b>northeri</b>	N DISTI	RICT OF	OKLAHON	<u> </u>
	L _ <b></b>		DOCKET NO	<b>&gt;</b>	79-CR-1	11-C	
	JUDGMENT ANI	D PROBATIO	N/COMMIT	MEN	r ordi	ER AO	245 (5/75)
	In the presence of the attorney for the defendant appeared in person				MONTH	DAY	YEAR
COUNSEL		However the court advise	d defendant of right to	o counsel an	11 ad asked whet	her defendant	79
	>	have counsel appointed by t	the court and the defenda	int thereupor <b>Retain</b>	n waived assista		
PLEA	GUILTY, and the court be there is a factual basis for t		NOLO CONTEN	idere,	N		,
	There being a finding/perdict of	NOT GUILT	Y. Defendant is disch	arged	Já	ack C. Silv	1979 er, Clerk
	Defendant has been convicted as	charged of the offense(s	) of having vi		U.	S. DISTRIC	CT COUR
FINDING & \ JUDGMENT (	Section 1708, as	charged in the	Indictment.				
	i e e e e e e e e e e e e e e e e e e e						
		• •			•		
OR PROBATION ORDER	is placed on prob			. ( <i>3</i> )	16425 2	a Crim Got-	
			·				
SPECIAL CONDITIONS OF PROBATION	In addition to is ordered to mak	the usual concerns the restitution	nditions of p in the amoun	probati it of \$	on, the 198.00.	defend	lant
					:		
				··	et i		
ADDITIONAL CONDITIONS OF PROBATION	In addition to the special condition reverse side of this judgment be impany time during the probation perion probation for a violation occurring d	posed. The Court may chang ad or within a maximum pr	e the conditions of proba	tion reduce.	or extend the I	period of prob	ation, and a
	The court orders commitment to	o the custody of the Atto	orney General and reco	ommends,	I .	ed that the Cle	
COMMITMENT RECOMMEN- DATION					and comm	itment to the er qualified of	U.S. Mar-
	J		ſ			AS A TRUE C	
SIGNED BY	ict Judge	u Carl			Ву	<del>-</del>	
U.S. Magis	H. DALE CO	OK D	ate <u>11-8-79</u>		,	•	DEPUTY
	The second secon	gant and december with order to the control of			ho		

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	America vs.	ites Di	strict C	Ourer
EFENDANT	NOSE MARIE CREAR	RN DISTRIC	T OF OKLAH	IOMA _
		vo. <b>→</b> <u>  79-C</u>	R-102-C	
	JUDGMENT AND PROBATION/COMM	TMENT C	RDER	40 245 (5/75
	In the presence of the attorney for the government the defendant appeared in person on this date	_	nth DAY	YEA <b>79</b>
COUNSEL	WITHOUT COUNSEL However the court advised defendant of right have counsel appointed by the court and the defe	to counsel and ask ndant thereupon wais	ced whether defend yed assistance of cou	dant desired insel,
	Wesley E. Johnse (Name of	on, Court A	ppointed	
PLEA	GUILTY, and the court being satisfied that there is a factual basis for the plea,	ENDERE,	TILUDITONTI 8 VOV	YE D
$\overline{}$	There being a finding process of \( \text{\text{\text{NOT GUILTY.}}} \) Defendant is dis	charged	lack C. Silv	er, Clerk
	Defendant has been convicted as charged of the offense(s) of baving v.	lolated Tit	U.S. DISTRI	CT COUR
FINDING & (	Sections 1708 and 495, as charged in Chants		it care rise.	LVCINCIL
		,	·,	+ 32+1
	The court asked whether defendant had anything to say why judgment should not be	nronounced. Becaus	e no sufficient cause	to the cont
	was shown, or appeared to the court, the court adjudged the defendant guilty as chereby committed to the custody of the Attorney General or his authorized representation.	arged and convicted	and ordered that:	The defenda
	Count 1 - Two (2) Years			
SENTENCE OR	Count 2 - Two (2) Years			
- 1		in Count	in Count 2	shall
OR PROBATION	Count 2 - Two (2) Years  IT IS FURTHER ORDERED that the sentence run concurrently with the sentence imposed	in Count 1	in Count 2	shall
OR PROBATION ORDER	Count 2 - Two (2) Years  IT IS FURTHER ORDERED that the sentence run concurrently with the sentence imposed	in Count 1	in Count 2	shall
OR PROBATION ORDER  SPECIAL CONDITIONS OF	Count 2 - Two (2) Years  IT IS FURTHER ORDERED that the sentence run concurrently with the sentence imposed	in Count 1	<b></b>	shall
OR PROBATION ORDER  SPECIAL CONDITIONS OF	Count 2 - Two (2) Years  IT IS FURTHER ORDERED that the sentence run concurrently with the sentence imposed	in Count 1	<b></b>	shall
OR PROBATION ORDER  SPECIAL CONDITIONS OF	Count 2 - Two (2) Years  IT IS FURTHER ORDERED that the sentence run concurrently with the sentence imposed	in Count 1	<b></b>	shall
OR PROBATION ORDER  SPECIAL CONDITIONS OF	Count 2 - Two (2) Years  IT IS FURTHER ORDERED that the sentence run concurrently with the sentence imposed	in Count 1	<b></b>	shall
OR PROBATION ORDER  SPECIAL CONDITIONS OF PROBATION ADDITIONAL CONDITIONS OF	Count 2 - Two (2) Years  IT IS FURTHER ORDERED that the sentence run concurrently with the sentence imposed	ed that the general co	onditions of probations of the period of the	on set out or
OR PROBATION ORDER  SPECIAL CONDITIONS OF PROBATION ADDITIONAL CONDITIONS OF	IT IS FURTHER ORDERED that the sentence run concurrently with the sentence imposed.  In addition to the special conditions of probation imposed above, it is hereby order reverse side of this judgment be imposed. The Court may change the conditions of probation imposed above, it is hereby order reverse side of this judgment be imposed. The Court may change the conditions of probation period or within a maximum probation period of five	ed that the general coobation, reduce or exe years permitted by	onditions of probatic stend the period of p law, may issue a wa	on set out or probation, ar irrant and re
OR PROBATION ORDER  SPECIAL CONDITIONS OF PROBATION  OF PROBATION  COMMITMENT	IT IS FURTHER ORDERED that the sentence run concurrently with the sentence imposed.  In addition to the special conditions of probation imposed above, it is hereby order reverse side of this judgment be imposed. The Court may change the conditions of probation for a violation occurring during the probation period of five probation for a violation occurring during the probation period.	ed that the general coobation, reduce or exe years permitted by	onditions of probatic ctend the period of p law, may issue a wa	on set out or probation, ar irrant and re- c Clerk delive this judgmer the U.S. Ma
OR PROBATION ORDER  SPECIAL CONDITIONS OF PROBATION  OF PROBATION  COMMITMENT	IT IS FURTHER ORDERED that the sentence run concurrently with the sentence imposed.  In addition to the special conditions of probation imposed above, it is hereby order reverse side of this judgment be imposed. The Court may change the conditions of probation for a violation occurring during the probation period of five probation for a violation occurring during the probation period.	ed that the general coobation, reduce or exe years permitted by	onditions of probatic stend the period of p law, may issue a wa t is ordered that the a certified copy of and commitment to	on set out or probation, ar irrant and re- c Clerk delive this judgmer the U.S. Ma d officer.
OR PROBATION ORDER  SPECIAL CONDITIONS OF PROBATION  ADDITIONAL CONDITIONS OF PROBATION  COMMITMENT RECOMMEN- DATION	IT IS FURTHER ORDERED that the sentence run concurrently with the sentence imposed.  In addition to the special conditions of probation imposed above, it is hereby order reverse side of this judgment be imposed. The Court may change the conditions of probation for a violation occurring during the probation period of five probation for a violation occurring during the probation period.	ed that the general coobation, reduce or exercise years permitted by	onditions of probatic stend the period of p law, may issue a wa t is ordered that the a certified copy of and commitment to thal or other qualifie	on set out on probation, an irrant and rev c Clerk delive this judgmen the U.S. Mai d officer.
OR PROBATION ORDER  SPECIAL CONDITIONS OF PROBATION  ADDITIONAL CONDITIONS OF PROBATION  COMMITMENT RECOMMEN-	IT IS FURTHER ORDERED that the sentence run concurrently with the sentence imposed.  In addition to the special conditions of probation imposed above, it is hereby order reverse side of this judgment be imposed. The Court may change the conditions of probation for a violation occurring during the probation period of five probation for a violation occurring during the probation period.  The court orders commitment to the custody of the Attorney General and	ed that the general condition, reduce or exercise years permitted by recommends,	t is ordered that the certified copy of and or other qualifier RTIFIED AS A TRUIS DATE	on set out on probation, an irrant and rev c Clerk delive this judgmen the U.S. Mai d officer.

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efendant >	EDGAR OSVALDO DUARTE	<u>rkict of</u>	OKLAHO	
	L   DOCKET NO. → L_	79-CR-13	7-c	
	JUDGMENT AND PROBATION/COMMITMEN	T ORDE	ER AC	245 (5/75
	In the presence of the attorney for the government the defendant appeared in person on this date	MONTH	DAY 1	YEAF <b>79</b>
COUNSEL	WITHOUT COUNSEL  However the court advised defendant of right to counsel a have counsel appointed by the court and the defendant thereup	and asked whet on waived assista	her defenda	nt desired
=	WITH COUNSEL Howard W. Sell, Court Appo (Name of counsel)		 GUILTY	
PLEA	GUILTY, and the court being satisfied that there is a factual basis for the plea,		r GUILTY	1979
	( NOT GUILTY. Defendant is discharged		· / / <b>1</b>	פופו
	There being a findin work tof \\ \bigcup \bigcup \ GUILTY. Defendant is discharged \\ \bigcup \bigcup \ GUILTY.	U. S	:ck (), ();! <b>S.</b> DIS[[]]	ut www
INDING &	Defendant has been convicted as charged of the offense(s) of having violated Section 1326, as charged in the Information.	Title 8	, v.s.	
UDGMENT (			* 13	
			 Maint — ⊀e .	
}				
,	was shown, or appeared to the court, the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the defendant guilty as charged and correspondent to the court adjudged the court adjudged the court adjudged to t	and the	red that goe size of defend	aneese lant
SENTENCE OR PROBATION ORDER	was shown, or appeared to the court, the court adjudged the defendant guilty as charged and core recognition of sentence is hereby suspended is placed on probation for a period of One (1) Yes	and the	defend this di	dant ate.
OR PROBATION	was shown, or appeared to the court, the court adjudged the defendant guilty as charged and control of the imposition of sentence is hereby suspended is placed on probation for a period of One (1) Year	and the	defend	dant
OR PROBATION	was shown, or appeared to the court, the court adjudged the defendant guilty as charged and core recognition of sentence is hereby suspended is placed on probation for a period of One (1) Yes	and the	defend	dant
OR PROBATION ORDER  SPECIAL CONDITIONS	The imposition of sentence is hereby suspended is placed on probation for a period of One (1) Year addition to the usual conditions of probatic is not to re-enter the United States illegally.	and the ar from	defend	dant
OR PROBATION ORDER  SPECIAL CONDITIONS OF	was shown, or appeared to the court, the court adjudged the defendant guilty as charged and continuous accompanies of the imposition of sentence is hereby suspended is placed on probation for a period of One (1) Year of the usual conditions of probation for a distinct conditions of probation and the usual conditions of probations.	and the ar from	defend	dant
OR PROBATION ORDER  SPECIAL CONDITIONS OF	The imposition of sentence is hereby suspended is placed on probation for a period of One (1) Year In addition to the usual conditions of probation is not to re-enter the United States illegally.	and the ar from	defend	dant
OR PROBATION ORDER  SPECIAL CONDITIONS OF	The imposition of sentence is hereby suspended is placed on probation for a period of One (1) Year In addition to the usual conditions of probation is not to re-enter the United States illegally.	and the ar from	defend	dant
OR PROBATION ORDER  SPECIAL CONDITIONS OF	The imposition of sentence is hereby suspended is placed on probation for a period of One (1) Year In addition to the usual conditions of probation is not to re-enter the United States illegally.	and the ar from	defend	dant
OR PROBATION ORDER  SPECIAL CONDITIONS OF PROBATION ADDITIONAL CONDITIONS OF	The imposition of sentence is hereby suspended is placed on probation for a period of One (1) Year and the special conditions of probation is not to re-enter the United States illegally.  In addition to the special conditions of probation imposed above, it is hereby ordered that the generous side of this judgment be imposed. The Court may change the conditions of probation, reductions are required.	and the ar from	defendence this defendence this defendence the defe	set out on tobation, and
OR PROBATION ORDER  SPECIAL CONDITIONS OF PROBATION ADDITIONAL CONDITIONS OF	The imposition of sentence is hereby suspended is placed on probation for a period of One (1) Year and to re-enter the United States illegally.  In addition to the usual conditions of probation imposed above, it is hereby ordered that the general states is the conditions of probation reduced the conditions of probati	and the ar from the ar frow the ar from th	defendence this defendence this defendence the second of probation period of project a warranteed that the Control of the second	set out on tobation, and ant and revo
OR PROBATION ORDER  SPECIAL CONDITIONS OF PROBATION OF PROBATION	The imposition of sentence is hereby suspended is placed on probation for a period of One (1) Year and the content of the usual conditions of probatic is not to re-enter the United States illegally.  In addition to the special conditions of probation imposed above, it is hereby ordered that the generous side of this judgment be imposed. The Court may change the conditions of probation, reduction for a violation occurring during the probation period of five years permit probation for a violation occurring during the probation period.	and the ar from	defendence this defendence this defendence the defe	set out on tobation, and ant and revo
OR PROBATION ORDER  SPECIAL CONDITIONS OF PROBATION ADDITIONAL CONDITIONS	The imposition of sentence is hereby suspended is placed on probation for a period of One (1) Year In addition to the usual conditions of probatic is not to re-enter the United States illegally.  In addition to the special conditions of probation imposed above, it is hereby ordered that the geneverse side of this judgment be imposed. The Court may change the conditions of probation, reduce any time duting the probation period or within a maximum probation period of five years permit probation for a violation occurring during the probation period.  The court orders commitment to the custody of the Attorney General and recommends	and the ar from the ar frow the ar from th	of probation period of proissue a warranded that the Clopy of the copy of the	set out on tobation, and ant and revo
OR PROBATION ORDER  SPECIAL CONDITIONS OF PROBATION  OF PROBATION  COMMITMENT RECOMMEN- DATION	The imposition of sentence is hereby suspended is placed on probation for a period of One (1) Year In addition to the usual conditions of probatic is not to re-enter the United States illegally.  In addition to the special conditions of probation imposed above, it is hereby ordered that the generate side of this judgment be imposed. The Court may change the conditions of probation, reducing the probation occurring during the probation period of the years permit probation for a violation occurring during the probation period.  The court orders commitment to the custody of the Attorney General and recommends	and the ar from the ar frow the ar from th	of probation period of proissue a warranded that the Clopy of the copy of the	set out on tobation, and ant and revo
OR PROBATION ORDER  SPECIAL CONDITIONS OF PROBATION OF PROBATION COMMITMENT RECOMMEN-	The imposition of sentence is hereby suspended is placed on probation for a period of One (1) Year In addition to the usual conditions of probatic is not to re-enter the United States illegally.  In addition to the special conditions of probation imposed above, it is hereby ordered that the generous side of this judgment be imposed. The Court may change the conditions of probation any time during the probation period or within a maximum probation period of five years permit probation for a violation occurring during the probation period.  The court orders commitment to the custody of the Attorney General and recommends	and the ar from the ar frow the ar from th	of probation period of probation period of probation period of proissue a warranted that the Cl copy of the internet to the period of proissue as warranted that the Cl copy of the internet to the period of probation period of period	set out on tobation, and ant and revo
OR PROBATION ORDER  SPECIAL CONDITIONS OF PROBATION OF PROBATION COMMITMENT RECOMMEN- DATION	The imposition of sentence is hereby suspended is placed on probation for a period of One (1) Year In addition to the usual conditions of probatic is not to re-enter the United States illegally.  In addition to the special conditions of probation imposed above, it is hereby ordered that the generous side of this judgment be imposed. The Court may change the conditions of probation, reduced any time during the probation of or within a maximum probation period of five years permit probation for a violation occurring during the probation period.  The court orders commitment to the custody of the Attorney General and recommends the Judge H. DALE COOK	and the ar from  the ar from  It is ordered and comments of the comments of th	defendation period of probation period of probation period of professue a warranteed that the Cl copy of the hitment to the period of professue a warranteed that the Cl copy of the hitment to the period of professue a warranteed that the Cl copy of the hitment to the period of probation period of period p	set out on tobation, and ant and revo